

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAMES LUTHER
HARRIS,

Plaintiff,

v.

CASE NO. 09-3035-SAC

ROGER WERHOLTZ,
et al.,

Defendants.

O R D E R

This civil rights complaint was filed by an inmate currently confined at the El Dorado Correctional Facility, El Dorado, Kansas. Plaintiff names Roger Werholtz, Kansas Secretary of Corrections, and several state employees at the Hutchinson Correctional Facility, Hutchinson, Kansas (HCF) as defendants. He claims that while he was confined at the HCF in November, 2007, he was injured as the result of the use of excessive force and received inadequate medical attention. He seeks a declaratory judgment as well as compensatory and punitive damages. On February 24, 2009, this court entered an Order requiring that a Martinez Report be prepared and filed and that defendants respond to the complaint.

Summons has not yet issued, and the court is hereby rescinding and withdrawing its Order dated February 24, 2009. See Fed.R.Civ.P. Rule 54(b). The court is issuing this initial order instead, for reasons that follow.

SCREENING

Because Mr. Harris is a prisoner, the court is required by statute to initially screen his complaint. 28 U.S.C. § 1915A(a) and (b). Having screened all materials filed, the court finds the complaint must be dismissed without prejudice because it was not properly filed in this court.

It has come to the court's attention that plaintiff actually mailed the pleadings filed herein to the "Shawnee County District Court" at that court's correct address in Topeka, Kansas. However, an unnamed person in the clerk's office of the state district court forwarded plaintiff's pleadings to this court with a sticky note stating "I believe this was sent to our office in error." Plaintiff captioned his complaint, which is not on forms provided by this court, as "In the District Court of Shawnee County Kansas." Plaintiff alleges his complaint is "pursuant to KSA Ch. 60 & 42 USC § 1983," and cites state statutes and constitutional provisions.

Even though this court accepted plaintiff's pleadings upon receipt for filing, it now determines that his complaint was not properly filed in this federal court. On its face, it was not intended for filing in this court and was not mailed to this court by plaintiff.

The court shall dismiss this action, without prejudice, as mistakenly filed in this federal court when it was mailed to and captioned in the Shawnee County District Court by plaintiff.

The pleadings filed in this case shall be copied, and the

copies shall be retained in this court's file. The originals will be returned to the Shawnee County District Court with a copy of this Order. Plaintiff submitted numerous extra copies of his complaint. Those copies shall be returned to him with this Order.

If plaintiff wishes to file a complaint in this United States District Court, he must do so upon forms provided by this court, he must caption all pleadings as in this court, and he must mail his pleadings to this court. This action is dismissed without prejudice to plaintiff's properly proceeding in either state or federal court on his claims.

The court strongly cautions plaintiff that time is of the essence as the statute of limitations for filing claims under 42 U.S.C. § 1983 is generally two years. Moreover, plaintiff should take care to file his complaint in a district court that has jurisdiction over the named defendants.

IT IS THEREFORE ORDERED that the court's Order entered herein on February 24, 2009, is withdrawn in its entirety.

IT IS FURTHER ORDERED that this action is dismissed, without prejudice, due to it having been mistakenly filed in this court, and that plaintiff's motions (Doc. 2 and Doc. 3) are denied as mistakenly filed in this court, as moot, and without prejudice.

IT IS FURTHER ORDERED that the clerk of the court shall copy all materials presently in the case file, retain those copies in this court's file, and return all original materials submitted by plaintiff to the clerk of the District Court of Shawnee County

with a copy of this Order.

Copies of this Order shall be transmitted to plaintiff, to defendants, to the clerk of the Shawnee County District Court, to the Secretary of Corrections, to the Attorney General of the State of Kansas, and to the Finance Office of the facility where plaintiff is currently incarcerated.

The clerk is directed to transmit forms to plaintiff for filing a civil rights complaint under 42 U.S.C. § 1983 and for a motion to proceed without prepayment of fees, which must be used if he decides to file an action in federal court.

IT IS SO ORDERED.

Dated this 25th day of February, 2009, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge